

December 14, 2005

The regular meeting of the Santa Rosa County Building Code Board of Adjustments and Appeals was held December 14, 2005, at 3:00 p.m. in the conference room of the Santa Rosa County Building Inspection Department located at 6051 Old Bagdad Highway, Milton, FL 32583. Board members present were Mr. Danny Holt, Vice Chairman; Mr. Charles "Pete" Southerland, Mr. William J. Blackman and Mr. James "Larry" Hall.

Building Inspection Department staff in attendance was Mrs. Rhonda Royals, Deputy Building Official; Mr. Skip Tompkins, Compliance Division Superintendent; Mr. Randy Jones, Compliance Investigator and Mrs. Robyn Leverton, Administrative Assistant I.

Mr. Tom Dannheisser, County Attorney, was present for the meeting.

Mr. Danny Holt, Vice Chairman, called the meeting to order at 3:00 p.m.

There was technical difficulty with the sound system; therefore the cassette tape copy of this meeting is difficult to hear or understand.

Approval of Agenda:

There were no amendments to the agenda. Mr. Blackman made a motion to accept the agenda. Mr. Hall seconded the motion. The motion carried with a unanimous vote.

Approval of Minutes:

Mr. Southerland made a motion to approve the minutes from the October 14, 2005 meeting. Mr. Blackman seconded the motion. The motion carried with a unanimous vote.

Next Meeting:

The next regularly scheduled meeting is Wednesday, January 11, 2006, at 3:00 p.m. in the Building Inspection Department Conference Room.

Old Business (Probable Cause)

John & Theresa Shoemaker vs. Steven Brett Currence d/b/a Dolphin Custom Homes

Rhonda Royals introduced the case and reminded the Board that Mr. Currence is a state certified contractor and can only be reprimanded at the local level if fraud and/or willful code violation is proven.

Randy Jones provided an update on the case. He told the Board that this is a continuation of a case that was originally introduced in August '05. In August, Mr. Currence committed to a 90-day time frame to have the home complete. That 90-day time frame expired in November '05. The project is not done. Randy was on the job site Monday, December 12, 2005; he stated that it appeared to be close to completion. A discussion ensued and the Board members asked Randy several questions regarding any progress made. Randy believes the house to be 2-3 weeks from completion.

Mr. Tony Simpson, Attorney for the Shoemaker's, spoke. He stated that based on a handout from the financing company, which he provided, the home appeared to be 79% complete. Mr. Currence committed to having the structure complete by November 10; that has not occurred. The lender has granted another extension on the financing, this time until the 31st of January 2006. This was a 6-8 month construction job that is approaching the 2-year point. There is no guarantee that the Shoemaker's construction loan will be extended again as the lender is beginning to lose patience.

Mr. Simpson continued by saying that a check of the county building records has shown that in the same time frame since Mr. Currence has pulled the Shoemaker permit, in April of 2004 thru the present, he has pulled and completed construction on a total of 12 other homes. He has also pulled permits and completed remodels, demolitions and additions in this same time frame. What had occurred here, as you can see from the chronology, is months where Mr. Currence simply did not do the work. Consequently the Shoemakers have incurred tens of thousands of dollars in damages. The Shoemakers have initiated a civil suit to try to recover some of that money and through the Board; they also want to pursue administrative remedies.

A discussion ensued with the Board members asking questions. Per Mr. Simpson, they are aware of no liens at this time. The contract states... "The dwelling shall be substantially completed and ready for the final inspection by the appropriate government authorities within six months after the filing of the Notice of Commencement." It also states "Time for completion shall be told by acts of God", obviously we had hurricane Ivan during that time frame and there was a 4-month period afterwards when no work was done. There have been 6-month periods where no work was done subsequent to that and, as the record shows, he has pulled permits and completed numerous other homes during this same time frame.

The Board questioned Mr. Simpson regarding the draws. Mr. Simpson stated that Mr. Currence has been pulling the draws. Mr. Simpson said that he would have to check with the bank to see what the current percentage is right now. He has not been denied any draws by the bank.

Per Mrs. Shoemaker, according to Wachovia, their construction loan officer claims that 79% of the house is complete and the draws are current. All the upgrades of approximately \$20,000 were paid to Mr. Currence back in Feb 2004 (in advance), when contract was signed.

The Board again questioned Mrs. Shoemaker and her attorney asking if arbitration had been pursued. Mr. Simpson stated that an arbitration demand had been placed because Mr. Currence had, at one point, notified the Shoemakers in writing that he was not going to complete the contract. They responded with an arbitration demand. Mr. Currence responded by saying that he would finish building the house. That was during the summer of 2005.

A discussion ensued.

Wes Reeder, attorney for Mr. Currence spoke. He wished to respond briefly to some of the statements that were made and to help the Board get a better understanding of both sides of the story with respect to the non-completion within the 90-day period. Progress has been made, the house is not finished, but Mrs. Shoemaker also stated that they are satisfied with the work that has been completed to date. I think they want to see the house finished.

Mr. Reeder stated that he wanted to correct one statement that Mr. Simpson made. He said that there has been some claim of

liens attempted. Mr. Reeder stated that there have been no liens filed against this property. They saw Notice to Owners, as you know, these Notice to Owners are required to be filed by the contractors to preserve any lien rights they may have. They have no effect and no force and do not cause any jeopardy to anyone. There are no outstanding payments that need to be made on the Shoemakers house. There is a civil case seeking remedies for the money damages, if any, that were caused by the delays in this case. A delay case under section 541 of this Board's rules and under the SRC ordinances or under Florida law does not rise to the level of fraud or willful misconduct. There are defenses that we've raised in answer to the complaint for some of the delays. I have been working with Mr. Simpson and we hope to work with the Shoemakers to resolve the issues with respect to the financial damages.

As was pointed out earlier, the Board has to find fraud or willful violation of the building code. In this case, I don't believe there has been any showing of willful violations and delay is not included in the building code, there are no provisions in there that say that simply because the contractor delays that is can be seen as a willful violation. Mr. Currence is willing, has workers ready, and wants to proceed and correct the project and complete the project at this time. We ask the Board to give Mr. Currence additional time to do that. This Board does not have the jurisdiction to take up any contract issues. As far as the abandonment issue, it was pointed out that there was abandonment of more than 90 days at some point during the process, that is also an allegation in the civil complaint that is being disputed and also, Mrs. Shoemaker did say that there was minimal work going on. By the Board's rules of section 541, of the SRC code, abandonment is not simply being off the job, it's abandonment where there is termination by the contractor without notification. Mr. Currence has never terminated this job. Although, we admit substantial delays, that does not rise to the level of abandonment under the code.

The Board asked questions in regards to the progress made on the project. Mr. Currence addressed the Board. He listed the items remaining on the project: 8 pellets of sod, carpet (Mrs. Shoemaker asked that the carpet be delayed), punch items, shower door, mirror, appliances and the porch extension. He said that Mrs. Shoemaker asked him to please remember quality and not to rush her house. Mr. Currence said that he believes he can have a Certificate of Occupancy by the middle of next week.

Mr. Southerland made a motion to carry the case to a formal hearing, if there is a Certificate of Occupancy by that next meeting, cancel the formal hearing. Mr. Hall seconded the motion. Mr. Reeder wished to state that he objected to the Board referring the case to a final hearing without having articulated any incident of fraud or willful violation of the building code. The motion passed with a three to one vote with Mr. Blackman opposing.

#### Old Business (Probable Cause)

##### Steve & Kathy Jones vs. Joel Thompson d/b/a Sea Side Building Services

Rhonda Royals introduced the case; this is another case that we are revisiting to receive an update on the progress of the contractor's work. Randy Jones gave an update...this is a case regarding a metal roof that was started in Feb '05. At that time there was no permit on the job and the contractor was using an unapproved product. Since then the product has been approved, a permit has been issued and a final inspection has been completed and passed. Now there is an alleged problem with a leak that's on a gable end. Randy along with SRC Inspector, Bobby Burkett, has been to the jobsite recently. Randy stated that he saw no obvious reason that the roof would be leaking. The contractor hasn't been paid in full and Mr. Steve Jones isn't happy with the job because it's still leaking. Randy believes that if Mr. Fowler shows that he did not install the metal on the gable and that is the cause of the leak, he believes that Sea Side is not responsible for that leak. Randy recommends that the Board dismisses the case pending the findings on the gable.

Mr. Steve Jones addressed the Board. He stated that Sea Side did send a subcontractor out that did a fine job. The gable ends were not done that's why he called this afternoon to notify us of that. Someone else did the eaves and the gable ends as well. The only thing that he is looking at now is the leak problems and he has no idea where it's coming from. He has hired an attorney as there is an issue as far as monies are concerned.

Mr. Southerland made a motion to dismiss the case. Mr. Hall seconded the motion. The motion passed with a unanimous decision.

#### New Business (Probable Cause)

##### Herbert "Mike" Campbell vs. Steven Brett Currence d/b/a Dolphin Custom Homes

Rhonda Royals introduced the case. The Board needs to decide whether probable cause exists. She reiterated the fact that Mr. Currence is a state certified contractor.

Randy Jones explained the case to the Board. It is a similar case to the Shoemaker's. The permit was issued on June of 2004. The framing inspection passed in May 2005. The interior of this house was all but completed at one time. There was a lot of water intrusion, which ruined carpet and doors. Brick was totally removed from the house which they started replacing today. He (Randy) was at the job on Monday; it was locked, but looking through the windows it appeared that most everything inside has been fixed. It's an ICF house, and when removing the brick they damaged some forms. He presented a photo to the Board. There is some concern that the damage is affecting the integrity of the structure. In his personal opinion, he doesn't believe that to be the case. The forms are there to contain and shape the concrete. There is an appropriate repair for that from the manufacturer.

Randy said that he would let Mr. Campbell address the issues regarding money, the specifics of the timeframe and what has been said and to whom. As far as he is aware, there have been no liens filed against the property. He has been told by Mr. Campbell that he paid a supplier in order to avoid a lien being filed. The project is a long way from completion and Mr. Campbell is looking for some help.

Mr. Campbell addressed the Board. He stated that he signed a contract with Mr. Currence d/b/a Dolphin Custom Homes on April 30, 2004. In his opinion he believes Mr. Currence is unscrupulous and fraudulent. He has been unable to get help from anyone and he's hoping that the Board can assist in the completion of his home.

He believes a building code was violated in that the flashing was not installed in a timely manner. It was not installed when the felt and shingles were put on therefore, every time it rained, the house flooded. A mold problem developed. An inspector came out, prompted by a call from Mr. Campbell. He (Campbell) told the inspector that he didn't understand why the house was leaking. The inspector insinuated (with a look) that he must be crazy as there was no flashing. The inspector, Jim McGowan, had to instruct Mr. Currence to install the flashing in August. This was months after the house was shingled. So the first violation happened when the felt, shingles and brick were completed (where most of the flashing would have been installed), he did not put the flashing in. As a result the house developed a serious leakage problem which resulted in a mold problem which

cost \$16,000 to remediate and a lot of delay in the home construction. When the flashing was put in, it was installed improperly and even after the flashing was installed, the house continued to leak.

The second item he feels is a violation is the fact that Mr. Currence allows the existence of a large bulging mass of brick that sheds mortar daily. He believes that Mr. Currence claimed that water got behind the brick causing the bulge. It's deformed, not structurally sound and shedding mortar everyday. Mr. Currence wants to install drywall to hide it. He contends that this large deformed mass of brick, that's consistently shedding mortar, is moving outward and will eventually collapse. It's covered now by drywall so you can't actually look at it.

The third violation...Mr. Currence did not install the downstairs French doors per plans and manufacturer's instructions.

The forth violation...the roof is leaking.

Mr. Campbell then moved on to what he believes are the fraud issues. He said that his bank gave Mr. Currence money (draws) from the construction loan. He is to use that money for materials and supplies on his home. He didn't use it to pay for the supplies and materials. He knows this because he called the suppliers after receiving the "Warnings to Owner". He understands that the initial warning to the owner is common practice, but when you get two certified letters...

The Board asked several question of Mr. Currence and a discussion ensued.

Per Mr. Campbell, there are currently no liens on his house. Suppliers told Mr. Campbell that Mr. Currence was in arrears. In other words, he paid him money in April and May for specific supplies and services and he did not pay for those supplies and services until August and September. The point is that he is paying interest on that money that was drawn from the construction loan. The money was meant to pay the contractors and suppliers, not to use on other projects. He did not use it for his supplies/equipment.

The Board asked Mr. Campbell what remains on the project. Mr. Campbell said it needs to be bricked, sod needs to be laid, carpet needs installing and punch list (cosmetic) items need completing. In his closing Mr. Campbell said he saved money for 25 years to build this home. He said that now his dream is gone; the home is going up for sale as soon as it's built because he expected to move in a year ago. He has been paying bills for rent, storage and mortgage payments, for the last year, which exceed \$2,000; that means he has to go to his bank account every month to pay bills. His savings has been depleted due to Mr. Currence not being able to complete the house as promised. His construction loan expired in July; they gave him two 90-day extensions. The second extension was up on December 1st. He now faces penalties from the bank and they will not grant another extension.

The Board asked more questions and a discussion ensued. A question was brought up about arbitration. Mr. Campbell said that since the contract had been breached, his attorney recommends mediation.

Wes Reeder, attorney for Mr. Currence spoke. He stated that he has been speaking with Mr. Campbell's attorney. With respect to the completion dates, he and Mr. Trawick (Campbell's attorney) have exchanged correspondence and had agreed to an estimated time of completion as January 23, 2006. The items cited are not code items, but 'punch-list' items, which are not code violations. Through a series of correspondence between Mr. Campbell, his attorney and Mr. Currence a plan was devised to lead to completion of the house. The correspondence to Mr. Currence, through Mr. Campbell's attorney, identified a significant number of discrepancies. Mr. Currence responded to the attorney by providing a written response to each item. Mr. Campbell responded to that and said that he accepted the answers that were provided with several exceptions. Although they are not at the point of a CO or a final punch list, it is in the works.

In regards to the other homes being built by Dolphin Custom Homes, from the time of these contracts (Shoemaker, Tucker and Campbell) which were all around the same time, Dolphin has successfully completed several other homes. In fact, he has about 12 other units that are in progress, aside from these, that are on track and on schedule with no complaints. In every profession there are situations where problems can arise and it just so happens that he currently faces the situation of having three of them arise at the same time. We are working to address these things.

The Board asked questions and a discussion ensued.

Mr. Currence then addressed the Board. He stated that the biggest issue he has with the Campbell home is the brick mason which has since been terminated. He pulled all the brick off the house and is paying to have it put back on. The flashing that is currently on the house is temporary to stop the water from coming into the house until the brick mason gets to that point. The Board asked time frame related questions. Mr. Currence stated that this project had a delay in starting. Mr. Currence was asked other delay related questions and was not able to answer.

Mr. Hall made a motion that the case go to a formal hearing. Mr. Southerland seconded the motion. Discussion...Mr. Reeder spoke stating that he objects it going to a formal hearing due to no reason stated. He says that he hasn't heard any reason today to give the Board any reason to find that there has been a willful violation of the building code or that there has been fraudulent conduct. Delay under the FL law and under the Board's rules is not fraud. He asked that the Board help him to understand why it is being referred to a formal hearing.

Mr. Hall stated that the flashing would be considered a code violation.

Mr. Dannheisser stated that the County would provide written notice of the specific charges and it would be mailed 15 days prior to the formal hearing. In a formal hearing, the burden to prove violation would be with the County. If proven, it would only affect his ability to pull permits in Santa Rosa County.

Mr. Reeder wanted Mr. Currence to speak of his problems he was having with the flashing. Mr. Currence said he did not know how to properly flash the house; he called Jim McGowan, Santa Rosa County Building Inspector and asked him to help.

Mr. Blackman stated that it may be too soon to go to a formal hearing; let's table the case until the next meeting and look at the progress. Mr. Hall withdrew his motion to move to formal hearing. Mr. Southerland withdrew the second.

Mr. Reeder said that the brick mason is committed to complete by January 23 and more than likely, no progress will show over the holidays. He asked the Board to consider that.

Mr. Blackman made a motion to table case until the next meeting. Mr. Hall seconded the motion. The motion passed unanimously.

Mr. Danny Holt, Vice Chairman, called a recess at 4:55 p.m.; meeting was called back to order at 5:05 p.m.

There is no tape available for the remainder of the meeting.

#### New Business (Probable Cause)

Keith & Tracy Tucker vs. Steven Brett Currence d/b/a Dolphin Custom Homes

Randy Jones introduced the case. He stated that this is another that is similar to the Shoemaker case. The permit was pulled in June 2004. The inspection progress was reviewed.

The Board noted that a year and a half later there is no framing inspection. Arbitration was filed for and the owners have filed a civil suit.

Mr. Reeder stated that there is currently no evidence of misappropriation of funds.

Mr. Currence stated that he has waited 45 days to get the Tuckers to sign their electrical layout, they haven't signed. He claims that if the owner's would make their choices, he could proceed with the project.

Timelines and requests for information were disputed by both parties. Discussion ensued with the Board members asking questions.

There has been a lien filed on the project and Mr. Currence has 75 days to satisfy the lien. The time for lien satisfaction will be up on February 8th, 2006.

Mr. Blackman made a motion to carry the case to a formal hearing. Mr. Southerland seconded the motion. The motion passed with a unanimous vote.

#### New Business (Appeal of Building Officials's Interpretation of Code)

Kevin M Case d/b/a Collins and Associates

Rhonda Royals introduced the case and stated that Collins and Associates had no representation at the meeting.

Randy Jones reviewed the case which was in regards to a roofing inspection that the Building Department conducted; our department turned the roof down. The contractor is appealing our interpretation of the method in which the 3-tab shingle roof should have been installed. The Board recommended at the last meeting that Randy and Mr. Allen, a Collins representative, meet at the jobsite and that if the repairs were made to the shingles that lift up, the contractor was in compliance with the manufacturers' instructions.

Randy stated that he met with another rep at the jobsite on Friday, October 14th, 2005 and he explained the repair process. As of this meeting, he is unaware of any repairs being made and has been unable to reach Collins and Associates. Therefore, as far as he is aware, Collins failed to install the shingles per the manufacturer's installation instructions and failed to obtain the required inspections. They also have 90 +/- other open permits which need final inspections. He recommends the Board take the case to the next level.

Mr. Blackman made a motion to move the case to a formal hearing. Mr. Hall seconded the motion. The motion carried with a unanimous vote.

Mr. Hall made a motion to adjourn the meeting. Mr. Southerland seconded the motion. The motion carried with a unanimous vote.

The meeting was adjourned at 5:55 p.m.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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Frank Harold, Chairman

Prepared by Robyn Leverton, Administrative Assistant I

Santa Rosa County Building Inspection Department